



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
ENFORCEMENT DIVISION
*DIRECTIVE***

**DIRECTIVE NUMBER
800**
**DISTRIBUTION DATE
February 7, 2005**

1. **SUBJECT: UNRUH CIVIL RIGHTS ACT COMPLAINTS**
2. **PURPOSE:** To set forth the procedures for accepting cases alleging violations of the Unruh Civil Rights Act (Civ. Code, § 51).
3. **BACKGROUND:** The Unruh Civil Rights Act prohibits business establishments from discriminating in the provision of accommodations, facilities, privileges, and services. The Unruh Civil Rights Act expressly prohibits discrimination on the basis of sex, race, color, religion, ancestry, national origin, blindness and other physical disabilities.

The California Supreme Court has interpreted the Unruh Act to prohibit "arbitrary" discrimination that encompasses not only the enumerated bases, but also bases not specifically named in the law (e.g., long hair, unkempt appearance). In Harris v. Capital Growth Investors, (1991) 52 Cal.3d 1142, the California Supreme Court clarified the types of non-enumerated groups that are protected by the Unruh Act. Such protected groups must be based on "personal characteristics." Personal characteristics include appearance, gender, political and social affiliation, sexual preference, health, disability, and similar aspects of an individual. The court specifically excluded discrimination based on "economic characteristics."

4. **PROCEDURES:**

A. **Filing Requirements:**

All Unruh Act complaints must be filed with the Department of Fair Employment and Housing (DFEH) within one year of the date of harm.

A complainant may, however, file a private lawsuit without filing a complaint with the Department. Complainants who desire to file a lawsuit should consult with an attorney regarding the filing requirements. Lawsuits should be filed within one year of the violation to avoid any statute of limitations issues.

B. Bases Cited in the Statute:

Complaints alleging the protected group categories specified in the Unruh Act will be accepted and processed, except for those cases involving issues of first impression.

C. Bases Not Specifically Cited in the Statute or Cases Involving Issues of First Impression:

Persons desiring to file Unruh complaints on a basis other than those specifically enumerated in the Act or complaints involving issues of first impression will be advised that such requests will be reviewed on a case-by-case basis. The complaint should be drafted but **not** signed by the complainant. When drafting the complaint, consideration should be given to the Harris decision and non-enumerated arbitrary discrimination which includes discrimination based on "personal characteristics."

The drafted complaint and intake notes will be forwarded to the appropriate Regional Administrator. The Regional Administrator and the Deputy Director Enforcement Division, after consultation with the Chief Counsel, will determine whether it is appropriate to proceed with the complaint.

D. Complaint Language:

The following language will be included in Section III of complaint drafts alleging a violation of the Unruh Act.

"I believe I was (denied services, etc.) because of my (protected basis) and because of my membership in a class of people who are (protected basis). This is a violation of section 12948 of the Government Code. The Government Code incorporates section 51 of the Civil Code. "

E. Sex Discrimination Complaints:

In January 1995, the Unruh Civil Rights Act was amended to include specific causes of action involving sex discrimination and sexual harassment.

1) Gender Pricing Cases:

The prohibition against sex discrimination under section 51 of the Unruh Act includes *gender-based pricing* practices by

business establishments. Examples of such cases are dry cleaners who charge more to clean a woman's blouse than a man's shirt or hair stylists who charge more to trim a woman's hair than a man's when the hair is similar in length. These types of cases should be accepted and processed in the same manner as other Unruh Act discrimination complaints.

2) **Sexual Harassment in Business, Service and Professional Relationships (Civ. Code, § 51.9):**

Although Civil Code section 51.9 does not fall under the scope of the Department's jurisdiction, it is included here for informational purposes.

- a) The Unruh Act was amended in 1995 to include section 51.9 which involves sexual harassment in business, professional, consumer, or other types of relationships. Such relationships might include:
 - Physician, psychotherapist, or dentist and patient;
 - Attorney, social worker, real estate agent, accountant, etc. and client;
 - Landlord or property manager and tenant;
 - Teacher and student.
- b) Plaintiffs in these actions must establish a cause of action if all of the following elements listed in the statute are proven by the plaintiff:
 - This is a business or professional relationship between the plaintiff and the defendant;
 - The defendant made unwelcome, persistent sexual advances continuing after a request by the plaintiff to stop;
 - There is an inability to easily terminate the relationship without tangible hardship; and
 - The plaintiff has suffered or will suffer economic loss, disadvantage, or personal injury as a result of the defendant's conduct.

5. **APPROVAL:**

Suzanne M. Ambrose, Director

Date